

LAW OFFICES
KOTEEN & NAFTALIN, L.L.P.
1150 CONNECTICUT AVENUE
WASHINGTON, D.C. 20036-4104

BERNARD KOTEEN*
ALAN Y. NAFTALIN
ARTHUR B. GOODKIND
GEORGE Y. WHEELER
MARGOT SMILEY HUMPHREY
PETER M. CONNOLLY
CHARLES R. NAFTALIN
JULIE A. BARRIE
• SENIOR COUNSEL

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TELEPHONE
(202) 467-5700
TELECOPY
(202) 467-5915

November 9, 1999

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, SW - Room A325
Washington, DC 20556

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Re: WT Docket 99-266

Dear Ms. Salas:

Herewith transmitted on behalf of United States Cellular Corporation, are an original and four copies of its Comments in the above-captioned proceeding.

In the event there are any questions concerning this matter, please communicate with this office.

Sincerely,


Peter M. Connolly

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Extending Wireless)	WT Docket No. 99-266
Telecommunications)	
Services to Tribal)	
Lands)	

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SUMMARY

United States Cellular Corporation ("USCC") believes that wireless carriers, particularly cellular carriers, can play a crucial role in bringing service to tribal lands, given their network architectures and cost structures, and their existing national networks.

USCC supports most of the initiatives proposed by the FCC in this proceeding to achieve better service to tribal lands, especially the FCC's proposal to relax wireless transmitter power and antenna height limitations.

However, USCC would point out that most of the FCC's proposed initiatives will not assist cellular carriers in providing improved service to tribal lands, in part because cellular carriers are already subject to the requirements proposed, such as the filing of "unserved area" applications, and in part because the other proposals are not relevant to cellular carriers and will thus have no effect on them.

At present, if wireless service is not being provided to unserved tribal lands it is not because of a lack of capacity to do so. Rather the problem has been that such service has not been economically viable.

USCC believes that wireless service to unserved tribal lands will only come about as a consequence of the reform of the FCC's universal service high cost support structure, to take into account the unique characteristics of wireless carriers' cost structures

and their regulatory status. If universal service is reformed wireless carriers will be able to participate meaningfully in the FCC's universal service support systems and will thus be able to extend service to tribal lands. A special "tribal lands" universal service fund also may be necessary.

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COMMENTS OF UNITED
STATES CELLULAR CORPORATION

United States Cellular Corporation ("USCC") hereby files its Comments on the Notice of Proposed Rulemaking ("NPRM") in above-captioned proceeding.¹ USCC owns and/or operates cellular systems 44 MSA and 101 RSA markets. Of those markets, 22 either overlap with or abut Indian "tribal lands."² Accordingly, USCC has a large stake in any action the FCC may take to improve service on tribal lands and stands ready to participate in the provision such improved service.

I. USCC Supports Most of the Regulatory
Initiatives Proposed By the FCC to
Provide Service to Tribal Lands

In the NPRM, the FCC proposes a variety of regulatory initiatives to encourage wireless carriers to provide "basic

¹ In The Matter of Extending Wireless Telecommunications Services to Tribal Lands, WT Docket No. 99-266, Notice of Proposed Rulemaking, FCC 99-205, released August 18, 1999 ("NPRM").

² "Tribal lands" are defined in Footnote 2 to the NPRM as "those areas in which principles of tribal sovereignty and federal support for tribal self-determination apply."

telephony" service to tribal lands and other unserved areas. As will be discussed below, USCC supports most of those initiatives. However, USCC would also stress that the benefits of using wireless telephony to serve tribal lands and other hitherto unserved areas cannot and will not be realized unless the FCC realigns its "high cost" universal service policies to take into account wireless carriers' unique cost structures and regulatory status, thus enabling such carriers to participate in the universal service support structure. Further, as we discuss below, it also will be necessary to establish a separate fund, administered by the federal government, to support services on tribal lands.

This is essential for the reasons of equity and competitive neutrality which have been stated by USCC and other wireless carriers in the universal service proceeding. However, it is also vital because CMRS carriers, and especially cellular carriers, offer the best hope of providing service to tribal lands and other unserved rural areas. They have the necessary infrastructure in place and have a cost structure which makes service in presently unserved remote locations a real possibility.³

Accordingly, it is very odd that the FCC, in virtually all of its specific discussions of rule reforms in the NPRM, has ignored the cellular industry, choosing instead to emphasize the PCS, LMDS, 39 Ghz and SMR services, as well as wireless technologies that do

³ See e.g., NPRM, Paras. 9-10.

not yet exist, and none of which has a proven record of service to rural America, as does cellular.

A. The FCC Should Relax Antenna Height
and Transmitter Power Limitations in
Tribal Lands and Other Unserved Areas

The NPRM (Paras. 17-22) proposes a relaxation of the FCC's transmitting power and antenna height limits for the PCS, LMDS, MDS, WCS, 39 Ghz, and 24 Ghz services⁴ in order to better serve tribal lands and other unserved areas.

USCC believes a relaxation of such requirements is an appropriate way to improve service to such areas, provided all wireless services are included. The essential point of the power and height limitations is the prevention of interference to neighboring systems. However, in sparsely populated and/or unserved areas that need is obviously less pressing. Accordingly, it makes sense to allow carriers to increase power to provide broader coverage in areas which need service and in which the interference risk is minimal.

Presumably, however, there would still need to be restrictions on signal strengths at the "signal boundaries" between systems serving tribal lands and neighboring systems.

⁴ As noted above, for whatever reason, the NPRM does not include the cellular service in the list of services potentially subject to a relaxation of power and height limitations. However, there is no good reason why the cellular service should not also be included.

Interference prevention methods similar to those used in the broadband PCS service, as outlined at Section 24.232 of the Rules, would work in this context.

B. USCC Supports Most of the Additional Measures Proposed to Assist in the Provision of Service to Tribal Lands, But Would Point Out Their Lack of Relevance to Cellular Carriers

The NPRM also proposes a variety of other rule revisions intended to facilitate provision of service to tribal lands by wireless carriers. They include a liberalization of "buildout" coverage requirements in the LMDS, PCS, SMR, and 39 Ghz services (Paras. 22-24), a right to extend coverage into tribal lands from adjacent service areas in all wireless services, including cellular (Paras. 25-27), relaxing restrictions on the use of spectrum licensed to private radio licensees, if such frequencies would be used to serve tribal lands (Paras. 28-34), and allowing "designated entities" to assign their PCS spectrum to non-designated entities free of the penalties to which such transfers are normally subject, if the assignee would agree to provide service to tribal lands (Paras. 35-36). The Commission seeks comment on whether it should allocate previously unallocated "spectrum bands" within frequencies allocated to other services in order to provide services to tribal lands and other unserved areas. (Paras. 44-46).

The FCC also asks whether it should consider the geographic configuration of tribal lands in defining service areas for new

wireless services (Para. 47-48), and whether it should consider the needs of tribal lands in establishing the technical rules for recently established wireless services under Parts 24, 26 and 27. Finally it asks whether it should offer "bidding credits" in auctions to wireless entities willing to provide service on tribal lands. (Paras. 50-53).

With one exception and one caveat USCC supports, or at least does not object to, these measures.

USCC does not support assigning to other parties presently unused spectrum allocated to licensees whose service areas may overlap tribal lands. In the cellular service, for example, carriers frequently shift frequencies within their assigned 800 MHz bands to maximize efficiency and deal with potential interference. Having "drop in" licensees operating on cellular frequencies in the same markets as the cellular licensees would pose insurmountable technical and other practical problems. We urge the FCC to take other steps to improve service to tribal lands before interfering with individual licensee spectrum allocations.

Also, any relaxation of "buildout" or other requirements for licensees in radio services other than cellular which cellular carriers did not receive at the time of their system construction, should be strictly limited to the provision of service to tribal lands.

However, we would point out that from the standpoint of improving service to tribal lands by cellular carriers, such steps will have little effect, either because cellular carriers are already operating under similar rules, or because the changes would be irrelevant to such carriers.

In the overwhelming majority of cellular markets, the five year "buildout" period is over and unserved areas in such markets are now subject to "unserved area" applications pursuant to Section 22.949 of the rules.⁵ If there were a widespread current demand for cellular service in any unserved area, including tribal lands, the unserved area rules would presumably facilitate a marketplace solution through new applications. The absence of such applications indicates that there is a lack of demand, at least at the prices that wireless services cost.

Also, the provision of cellular service to tribal lands will not be assisted by modifying the private radio rules to permit such service or by altering the DE rules (which do not apply under Part 22) or by allocating frequencies to provide new wireless services

⁵ USCC would strongly oppose the NPRM's proposal (Para. 27) that the cellular five year buildout period be abrogated in the few markets where it has not yet expired to permit extensions into tribal lands within cellular markets. Such a change would be unfair to cellular carriers whose expansion plans are predicated on the five year buildout period guaranteed by Section 22.947 of the FCC's rules. Also, such a change in the rules would prevent cellular carriers from offering service to tribal lands within the five year buildout period which was integrated with their surrounding system or systems.

to tribal lands. In rural unserved areas, including tribal lands, a lack of available channel capacity is usually not the problem for cellular or other wireless carriers. The problem is a mismatch between the actual costs of providing the service and the potential profits to be earned from such service.⁶

To the extent that changes in the FCC's rules lower cellular and other carriers' costs to provide service on tribal lands, they will facilitate the provision of such service and are thus worthy of support. However, if the FCC simply offers carriers the opportunity to provide service under circumstances which do not make economic sense, the result will be no change in the status quo.

As will be discussed below, the best way to increase demand for such service at prices which will cover wireless carriers' costs is to include the provision of wireless service within the "high cost" universal service support structure. We believe, for the reasons to be discussed below, that universal service reform offers the best means of solving the serious problem which the NPRM identifies.

⁶ This "mismatch" is exacerbated by the complex and potentially costly issues of sovereignty on tribal lands which the NPRM identifies, which affect everything from securing rights of way to constructing facilities to law enforcement. Wireless carriers cannot resolve such issues but urgently require regulatory certainty and a secure environment in which to operate.

II. Provision of Wireless Service to Tribal Lands Will Be Dependent on Reform of Universal Service

On November 2, 1999, the FCC released its landmark order concerning the restructuring of universal service support for "high cost," non-rural carriers.⁷

The High Cost Order and its companion "Inputs Order"⁸ describe the FCC's new non-rural high cost support mechanism and the methods by which the wireline "costs" are the "building blocks" of that mechanism were arrived at.

What the orders do not contain, despite the best efforts of Western Wireless, USCC, and other wireless carriers, is any real discussion, beyond "competitive neutrality" platitudes, of how wireless carriers' cost structures are to be fitted into the new universal service support structure. It would be difficult to discern from either order that wireless carriers even exist, much less that they comprise a huge and growing proportion of the nation's telecommunications infrastructure and can be a vital resource in serving unserved and underserved areas, including tribal lands.

⁷ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306, released November 2, 1999 ("High Cost Order")

⁸ In the Matter of Federal-State Joint Board on Universal Service; Forward Looking Mechanism for High Cost Support for Non-Rural LECS, CC Docket Nos. 96-45, 97-160 Tenth Report and Order, FCC 99-304, released November 2, 1999 ("Inputs Order").

For example, we still do not yet know the FCC proposes to measure distinctive wireless costs for universal service purposes. Nor does the FCC discuss the "hold harmless" formula adopted in the High Cost Order in relation to (previously unsubsidized) wireless carriers, except to say that the support provided under that formula will be "portable."

However, in that connection, the Commission ignores the basic question of whether wireless and wireline carriers may both receive support for the different "lines" they may provide to the same "high cost" customers. Further, it offers no criteria for determining which carrier is to receive support if both carriers cannot receive it.

Nor did the FCC clarify whether wireless carriers may obtain ETC status for the mobile service they currently provide or whether they have to provide any type of "wireless local loop" ("WLL") service to be designated as ETCs. We believe that the services eligible by federal universal support mechanisms under Section 54.101(a) of the FCC's rules may be provided by cellular and PCS carriers providing their present wireless services and a WLL service configuration should not be necessary to be designated as an ETC.

But the FCC must resolve these issues. For if the Commission continues to neglect them, the "disconnect" between its goal of achieving improved service to tribal lands and the necessary means

to achieve that goal will persist and prevent any progress from being made.

For example, under the formula adopted in the High Cost Order, non-rural carriers in only seven states, Alabama, Kentucky, Maine, Mississippi, Vermont, West Virginia, and Wyoming would receive support,⁹ were it not for the "hold harmless" support to be paid, for an unspecified period of time, to other carriers now receiving support under current support mechanisms.

It is not clear that the FCC will adopt a mechanism for rural high cost support exactly comparable to that adopted in the High Cost Order or the Inputs Order and we believe it should not. For there is nothing encouraging in either of those orders for wireless carriers who might wish to provide service on tribal lands in such states as Arizona, New Mexico, South Dakota, or Washington State, none of which were among the favored seven.

In any case, no wireless carrier, even one with the infrastructure in place to make service to now unserved tribal lands a real possibility, will move forward to offer such service unless it can earn a reasonable, albeit modest, profit by doing so.

⁹ See Public Notice, "Common Carrier Bureau Releases State-By-State Universal Service High-Cost Support Amounts For Non-Rural Carriers, and Forward-Looking Cost Results," DA 99-2399, released November 2, 1999.

And that will not be possible without some form of universal service support.¹⁰

Accordingly, USCC plans to participate in the proceedings this year and next year in which the FCC will resolve "rural" high cost support issues. It will insist that the FCC finally come to grips with the legitimate concerns of wireless carriers and those they now serve and could serve.

The stakes in those proceedings for the residents of tribal lands could not be higher. They will determine nothing less than whether in the twenty-first century American's poorest and most isolated people will finally begin to benefit from the telecommunications and information revolution now reshaping the world economy.

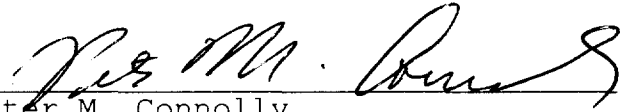
CONCLUSION

For the foregoing reasons, the FCC should certainly proceed with most of the steps outlined in the NPRM. More importantly, it should reform its universal service support structures to provide for meaningful inclusion of wireless carriers in order, in part, to achieve the purposes of this rulemaking proceeding.

¹⁰ In fact, USCC believes that if the unique problem of low telephone "penetration" on tribal lands is to be solved it will require a special high cost fund administered directly by the federal government to support service on tribal lands. USCC plans to discuss this proposal in greater detail in its comments to be filed this month in Docket 96-45.

Respectfully submitted

UNITED STATES CELLULAR CORPORATION

By: 
Peter M. Connolly
Koteen & Naftalin, L.L.P.
1150 Connecticut Ave., N.W.
Washington, D.C. 20036

November 9, 1999

Its Attorneys